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BILL C-71: THE WAR CRIMES BILL



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BILL C-71: THE WAR CRIMES BILL

AMENDMENTS TO CRIMINAL CODE

Clause 1

- ° Amends the Criminal Code provisions (s. 6) dealing with aircraft offences, to make it clear that Canada has jurisdiction against crimes against humanity and war crimes by deeming that such crimes took place in Canada.
- ° Clause 1 states that the crime must be committed by a Canadian citizen or an employee of Canada in a civilian or military capacity; by a citizen of a country with which Canada is at war; or the victim must be either a Canadian citizen or a citizen of an allied state while Canada is at war. A certificate issued by the Secretary of State for External Affairs stating that an armed conflict against Canada existed, or that a country was allied with Canada in an armed conflict, is admissible as proof of the facts contained thereon. These requirements may be illustrated as follows:

<u>Perpetrator</u>	<u>Victim</u>	<u>Does Canada have jurisdiction?</u>
Canadian citizen or employed by Canada	Anyone	Yes
Citizen of a country with which Canada is at war	Anyone	Yes
Anyone	Canadian citizen	Yes
Anyone	Citizen of allied state (in wartime)	Yes
Citizen of an allied state	Non-Canadian, non-ally (wartime)	No



- ° Clause 1 also contains a much more general provision that reads as follows:

(b) at the time of the act or omission, Canada could, in conformity with international law, exercise jurisdiction over the person with respect to the act or omission on the basis of the person's presence in Canada, and subsequent to the time of the act or omission the person is present in Canada.

The intent of this section is to provide that if by international law (customary or Conventional) Canada has jurisdiction over a person, that person may be prosecuted if present in Canada. Thus, a Russian committing a crime against humanity in Afghanistan who came to Canada could be prosecuted in Canada because all three countries are parties to the Geneva Convention which gives signatories jurisdiction. The section would cover allies also. For example, an American perpetrator of a war crime in Vietnam would be covered by this section if present in Canada. Unfortunately, as it stands now the section is confusing. It appears to say that Canada can assume jurisdiction only if the crime occurred in Canada. Perhaps this weak drafting can be corrected before final passage.

- ° Procedure and evidence shall be the same as at the time of the legal proceedings.
- ° The normal defences apply (except as limited by clause 2 discussed below).
- ° Even if the action was legal when and where it was committed, it is still considered a war crime or crime against humanity.
- ° A prosecution requires the personal consent of the Attorney General or the Deputy AG, and the proceedings can only be conducted by the AG of Canada or his Counsel.

## Clause 2

- ° Amends section 535 of the Criminal Code.
- ° In cases where the person had been tried and convicted outside Canada in absentia and was not represented by that person's own counsel and the person has not been punished, he can't defend himself in Canada on the ground that he has already been convicted. It is a principle of criminal law that you can't convict a person of the same crime twice, so without this provision, the person could have a successful defence.

## AMENDMENTS TO IMMIGRATION ACT

### Clauses 3 and 4

- ° Amends s. 19 regarding Inadmissible Classes.
- ° Makes a person inadmissible to Canada in the first place (s. 19) if there are reasonable grounds to believe the person committed a war crime or a crime against humanity.

### Clause 4

- ° Amends section 27(1).
- ° A permanent resident is removable if he or she is a war criminal and was granted landing after the Act comes into force  
or  
becomes a member of the inadmissible class after it comes into force.

### Clause 5

- ° Replaces section 32(5) dealing with the conduct of inquiries, giving an adjudicator the power to make a deportation order for persons convicted of war crimes or crimes against humanity.
- ° Permits conditional orders in cases of refugee claimants if Bill C-55 is passed.

### Clauses 6 and 7

- ° Amends 39(2) and (3) regarding the Security Intelligence Review Committee.
- ° This clause adds war crimes and crimes against humanity to the list of items which can be the subject of a report to the Review Committee by the Minister of Immigration and the Solicitor General on the basis of criminal or security intelligence reports received by them.

### Clause 8

- ° Amends s. 54.
- ° In removal proceedings for war crimes and crimes against humanity, the person shall be removed to a country selected by the Minister that is willing to receive the person, rather than giving the person the choice.



### Clause 9

- ° Amends s. 72(3)(b).
- ° A person ordered removed for these crimes may appeal to the IAB.

### Clauses 10 and 11

- ° For people appealing to the IAB, the Minister and the Solicitor General can make a report to the Review Committee, and the same procedure as under s. 39 takes place.

### Clause 12

- ° Amends s. 118.
- ° Certificates issued by the Secretary of State for External Affairs regarding the existence of international agreements shall be accepted at face value without needing proof of the signature or the facts contained therein.

## AMENDMENTS TO CITIZENSHIP ACT

### Clause 13

- ° Amends section 20.
- ° As the law now stands, a person cannot become a Canadian citizen under a number of circumstances (people in jail, charged with an offence, etc.).
- ° This section adds the following circumstances to that existing list: being under investigation for war crimes or crimes against humanity, having been charged with those offences, being on trial for them, appealing a conviction or having been convicted of such crimes.

## GENERAL

### Clause 14

- ° The Act can come into effect in stages. The amendments to the Criminal Code come into effect immediately upon royal assent. The other clauses can be proclaimed as the government wishes and need not all come into force at the same time.

Note: Existing Loss of Citizenship Provisions

Section 9 of the existing Citizenship Act permits the Governor in Council, after a report from the Minister, to take away citizenship if the person obtained citizenship by "false representation or by knowingly concealing material circumstances" (section 9). The provision also contains a presumption:

(2) A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if

(a) he was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances; and

(b) he subsequently obtained citizenship because he had been admitted to Canada for permanent residence.



# Hnatyshyn withdraws war crimes legislation

BY RICHARD CLEROUX  
The Globe and Mail

OTTAWA

Justice Minister Ramon Hnatyshyn last night unexpectedly withdrew until the fall legislation that would have closed Canada's borders to Nazi war criminals and would have opened the way for speedy prosecution of any suspected war criminals still alive in Canada.

The decision came as a blow to Canada's Jewish community, which has been pressing the Government for decades to prosecute suspected Nazi war criminals.

Mr. Hnatyshyn had introduced the legislation a week ago, and obtained an all-party agreement to speed it through the Commons without debate.

He said the new law was needed for the RCMP and Justice Department officials to continue investigation leading to possible prosecution of as many as 20 suspected Nazi war criminals and possibly more identified earlier this year by Mr. Justice Jules Deschênes, following his two-year inquiry.

Technically Mr. Hnatyshyn was beaten by the clock. There were only five minutes left until the 8 p.m. adjournment deadline when he presented his legislation for second reading.

Mr. Hnatyshyn blamed the Liberals for not allowing the House to go beyond the deadline. He said he would try again when he had more co-operation.

"It's still a priority for me, and I will bring it back as soon as the next sitting of the House," said the Justice Minister.

But even without a deadline, two Conservative backbenchers, Alex Kindy (Calgary East) and Andrew Witer (Toronto Parkdale-High Park), both of whom have sizeable East European communities in their ridings, were preparing to refuse the unanimous consent needed to pass the legislation without debate or amendment.

Dr. Kindy was determined to delay the bill by sending it to committee where witnesses could be heard and amendments made in the

fall. Despite repeated lobbying by fellow MPs and at least one Cabinet minister all day, Dr. Kindy refused to budge.

Mr. Witer took another approach. He drew up five amendments, and got approval for them from the representatives of the Canadian Jewish Congress, the B'nai B'rith and the North American Jewish Students Network, all organizations that had participated actively in the Deschênes inquiry.

The Jewish groups reluctantly went along with the package, rather than have the entire legislation delayed until the fall.



# Two Tory backbenchers plan to stall Nazi bill



Ramon Hnatyshyn

BY RICHARD CLEROUX  
The Globe and Mail  
OTTAWA June 27, 1987  
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Two Conservative backbenchers are planning to break an all-party agreement Tuesday that would have given speedy passage to the war criminals bill.

The bill, which the backbenchers hope to delay until the fall, would allow for prosecution of suspected Nazi war criminals still alive in Canada and would close Canada's borders to war criminals.

Justice Minister Ramon Hnatyshyn introduced the legislation last Tuesday. It amends the Criminal Code of Canada, the Immigration Act and the Citizenship Act.

He made a deal with opposition party leaders John Turner and Edward Broadbent for the speedy passage of the legislation so that the Justice Department and the RCMP can investigate 20 individuals in Canada identified by the Deschênes Inquiry into War Criminals last year as possible war criminals.

The plan is to allow Bill C-71 to be read through first, second and third reading without opposition and then send it to the Senate for final approval before the session adjourns for the summer.

Alex Kindy (PC, Calgary East) and Andrew Wiler

(PC, Parkdale-High Park), both of whom have sizeable Eastern European communities in their ridings, say they plan to speak on second reading and force the bill into legislative committee.

Mr. Wiler says he would like to see lawyers "carefully examine" the bill for two to three weeks.

"I think it's important to allow for a little bit of time for people — and I'm thinking of lawyers — to examine it carefully in committee," said Mr. Wiler. "I would prefer waiting until the fall."

Dr. Kindy said he intends to say no when unanimous consent is sought from the Commons to dispense with the legislative committee debate. "It's a major piece of legislation so it should not be rammed down in five minutes," Dr. Kindy said. "We have been waiting 40 years, so if we wait another little bit longer and get a good piece of legislation, it is worthwhile."

Yesterday both Mr. Wiler and Dr. Kindy were standing guard in the Commons so the bill could not be called up for debate in their absence and passed through all three readings before they had a chance to block it.

Mr. Wiler has another concern. He is worried about the possible damage to the reputation of anyone charged with being a war criminal.



## B'nai B'rith asks PM's aid for quick passage of bill

The Globe and Mail

OTTAWA

B'nai B'rith Canada yesterday appealed to Prime Minister Brian Mulroney to intervene to prevent two Conservative MPs from blocking speedy passage of a bill opening the way for prosecution of Nazi war criminals living in Canada.

"We are concerned that the good intentions of your Government and of the Minister of Justice may be hindered by individuals in the party who oppose the passage of the bill at this time," Frank Dimant, president of the Jewish-Canadian organization, said in a telegram to Mr. Mulroney. "We are concerned this will hinder the administration of justice. We request your assistance to ensure that the bill passes."

Dr. Alex Kindy (Calgary East) and Andrew Witer (Paradale High Park) say they intend to speak today when the bill comes up.

Mr. Witer is planning to intro-

duce an amendment, and Dr. Kindy says he wants to send the bill to the legislative committee for debate and study during the summer or in the fall.

Justice Minister Ramon Hnatyshyn obtained an all-party agreement earlier this month from the two opposition party leaders. He said he needed the new law to prosecute certain "particular" cases under RCMP investigation that cannot be prosecuted under the existing Criminal Code.

Mr. Witer said he wants a publication ban on all war-crimes prosecutions in Canada "to protect the privacy of innocent Canadians."

People could still attend the trials, he said, only nothing would appear in the newspapers, on radio or on television until after the trial was over and someone had been convicted.

"This is not a normal course of events. I don't care what you call it, we're talking about retroactive law," Mr. Witer said.